



**TELECOMMUNICATIONS
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August 10, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

**Re: *Ex Parte* Notice – CC Docket Nos. 10-213 and 10-145; WT
Docket No. 96-198**

Dear Ms. Dortch:

On August 9, 2011, Brian Scarpelli, Mary Brooner, Mark Uncapher, and Jason Pun of TIA, accompanied by Paula Boyd of Microsoft and David Hilliard of Wiley Rein LLP, counsel to TIA, met with Elizabeth Lyle of the Wireless Telecommunications Bureau, and Janet Sievert and Richard A. Hindman of the Enforcement Bureau, to discuss TIA's concerns in these proceedings. Laura Ruby of Microsoft and Tony Jasionowski of Panasonic participated by conference call. A copy of slides distributed during the meeting is attached.

TIA discussed its positions consistent with its filing on the implementation of the 21st Century Communications and Video Accessibility Act of 2010 (CVAA).¹ The conversation focused on the treatment of informal complaints. Noting that the Section 255 process had successfully encouraged the resolution of concerns by direct informal interaction between the parties, TIA's representatives urged that parties first be encouraged to resolve any complaint before submission to the Commission. TIA's representatives also discussed record keeping, noting that excessive documentation requirements could defeat the goal of encouraging the development of accessible products and services. The TIA representatives noted the need to maintain records that described features of devices that address accessibility. With respect to this requirement, TIA personnel pointed out the Global Accessibility Reporting Initiative (GARI) fostered by the Mobile Manufacturers Forum.² GARI maintains a list of features that address accessibility. TIA's representatives also inquired as to what would be considered relevant specialized customer premises and peripheral devices in connection with accessibility.

Additionally, the conversation addressed the need to avoid burdensome discovery in the handling of informal complaints and the processes under the Commission's rules for maintaining the confidentiality of confidential business information and trade secrets submitted to the Commission in responding to a complaint.

¹ See Comments of TIA, CG Docket Nos. 10-213, 10-145; WT Docket No. 96-198 (filed Apr.25, 2011).

² <http://www.mobileaccessibility.info/> (last accessed Aug. 10, 2011)

Finally, the discussion turned to the interplay of the “rule of construction” in Section 716(j) of the Twenty-First Century Communications and Video Accessibility Act and the four factors listed in Section 716(g) of the Act. TIA maintains that the Section 716(j) rule of construction evinces an intention on the part of the Congress to accord manufacturers flexibility in how accessibility features are implemented. To that end, the rule of construction affords more than just an affirmative defense in response to a complaint after an analysis of the Section 716(g) factors may have resulted in a tentative conclusion that a particular device was not accessible because of the absence of a given feature. Thus, Section 716(j) works to the benefit of consumers with disabilities by allowing a manufacturer to build a product helpful for one type of disability without burdening the product with the complexity of accessibility for all disabilities.

Respectfully submitted,

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

By: /s/ Mark Uncapher

Mark Uncapher
Director, Regulatory and Government Affairs

Brian Scarpelli
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Attachment: Slides

cc: Elizabeth Lyle
Janet Sievert
Richard Hindman



Telecommunications Industry Association *Ex Parte*

CG Docket No. 10-213

August 9, 2011



Telecommunications Industry Association

- TIA is a leading trade association for the ICT industry
- Members manufacture or supply products & services used in global communications across all platforms.
- TIA is a leader in achieving voluntary standards forged by consensus



Telecommunications Industry Association

- TIA has been an integral partner in the adoption of the 21st C Communications and Video Accessibility Act of 2010.
 - Achieved early consensus on the HAC language in the CVAA
 - Participated in dialogue with consumer representatives throughout the legislative process
- TIA co-chairs the EAAC.



FCC Regulations for Implementing the CVAA are of Critical Importance

- The CVAA is ground-breaking legislation.
 - Carefully crafted to promote continued availability of accessible technology without hampering technological innovation
 - Section 716 of the CVAA applies a more rigorous standard than section 255, but also allows industry greater flexibility
- A flexible regulatory approach is critical to implementing the CVAA successfully.



The FCC should use its Authority to Grant Blanket Waivers for those Devices whose Primary Purpose is not an ACS Functionality

- Section 716(h) of the CVAA gives the FCC flexibility to waive the accessibility requirements of Section 716 for any class of equipment that is (a) capable of accessing an advanced communications service; and (b) designed for multiple purposes, but is designed primarily for purposes other than using ACS.
 - The Manufacturer, in the first instance, defines the primary purpose of a device
 - Marketing, in the aggregate, should be the basis for determining if the device is ACS



The FCC should use its Authority to Grant Blanket Waivers for those Devices whose Primary Purpose is not an ACS Functionality

- Examples of equipment with a primary purpose other than ACS include game consoles, television receivers with VoIP capability, computers and tablets.
- Blanket waivers should be addressed in the Report and Order adopting the rules.
 - Provides clarity to manufacturers and service providers.
 - Manufacturers and service providers need to know the regulatory classification of a device before the design process begins, especially in those cases where the ACS is not a primary purpose.



The FCC should Stay within the Scope of the Factors listed in the CVAA to Review Accessibility of an ACS Product or Service

- Nature and Cost of steps needed to meet requirements with respect to specific product or service
- Technical and Economic Impact on the Operation
- Type of Operations of the Manufacturer or Provider
- Extent to which Provider or Manufacturer in question has offerings with varied functions, features and prices



The FCC should stay within the Scope of the Factors listed in the CVAA to Review Accessibility of an ACS Product or Service

- Where a device has both telecom features and ACS features, Section 255 should apply to the telecom features and the CVAA should apply to the ACS features.
 - As clarified in the House Report, Section 255 should apply to interconnected VoIP
- The Rule of Construction has meaning and application greater than as an affirmative defense in a complaint
 - Works to the benefit of consumers with disabilities by allowing the Manufacturer to build a product helpful for one type of disability without burdening the product with complexity of accessibility for all disabilities.



The Complaint Process must be Fair and Efficient and Favor Informal Resolution of Complaints

- No interest is served by a lengthy, litigious complaint process.
 - Consumers will not have speedy resolution.
 - Personnel resources should be focused on developing products that meet consumer needs.
 - Documentation required in proposed rules is especially burdensome.
- Emphasis should be on informal resolution of complaints; apply FCC's limited resources to only the most difficult situations.
 - Require parties to attempt resolution before filing at the FCC
 - Provide 45 days from service of the complaint for a response



A Transition Period of 24-36 Months before Full Enforcement is in the Public Interest

- It is imperative that there is a concerted education effort focused toward industry and the FCC, not just consumers.
 - All interests need to see and work with ACS regulations through several product cycles
 - Guidelines need to be developed and issued by FCC
 - Manufacturers and Service Providers all need to develop tools that look across all products and services in a portfolio for accessibility features and functionality